

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 7-5-18

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JAHNI FANNIS, on behalf
of himself and other similarly
situated individuals,

Civ. No.18 CV 857 (JGK)

Plaintiff,

v. ;

ACE INDUSTRIES CONSTRUCTION LLC,
KYLE LAVENDER, and ANTHONY CUCCINELLO

Defendants.
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ORDER CONDITIONALLY CERTIFYING A COLLECTIVE ACTION

Based on the parties' agreement that conditional collective action certification should be granted, it is ORDERED that:

1. The collective action notice entitled "NOTICE OF LAWSUIT AND OPPORTUNITY TO JOIN" and the "CONSENT TO JOIN AS PARTY PLAINTIFF" attached hereto as Exhibit A are hereby approved for mailing to potential plaintiffs; and
2. The collective class of potential plaintiffs in this matter shall consist of all current and former employees of Defendants (a) who were employed in non-supervisory capacities by Defendants at any time between January 31, 2015 to the present, inclusive (the "Collective Action Period")(the "Collective Action Members"); and
3. Defendants shall provide to Plaintiffs the names and last-known addresses and telephone numbers of all Collective Action Members. This information shall be supplied in paper form, and also digitally in one of the following formats: Microsoft Excel; Microsoft Word; or Corel WordPerfect; and

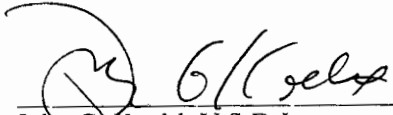
4. Plaintiffs shall mail the notice of collective action to all potential plaintiffs no later than twenty (20) days following the Defendants' disclosure of their names and last-known addresses; and

5. If any notice to any potential plaintiff is returned as undeliverable, Plaintiffs' counsel is permitted to mail the notice to such potential plaintiff again at any other address he may determine is appropriate; and

6. All potential plaintiffs must opt-in no later than sixty (60) days following the date of the original mailing of the collective action notice by filing the executed form entitled "Consent to Become Party Plaintiff" with the Court. Any additional mailings as described in paragraph 5 will not affect the opt-in deadline. Potential plaintiffs may return the executed form entitled "Consent to Become Party Plaintiff" to Plaintiffs' counsel in sufficient time for Plaintiffs' counsel to file the notices with the Court within sixty (60) days after the date on which Plaintiffs' counsel mailed the notices, and Plaintiffs' counsel shall thereupon promptly file such executed consents with the Court.

Dated: June , 2018

July 3,



John G. Koeltl, U.S.D.J.

EXHIBIT A

NOTICE OF LAWSUIT WITH OPPORTUNITY TO JOIN

FROM: JASON L SOLOTAROFF
GISKAN SOLOTAROFF & ANDERSON LLP
217 CENTRE STREET, 6TH FLOOR
NEW YORK NY 10013

TO: Current and former employees of Defendants ACE INDUSTRIES CONSTRUCTION LLC, KYLE LAVENDER, and ANTHONY CUCCINELLO (together "Defendants"), who were employed as non-supervisory employees at any time during the period from January 31, 2015 to the present.

RE: Overtime Lawsuit filed against Defendants pursuant to the Fair Labor Standards Act seeking payment for overtime work.

I. INTRODUCTION

The purpose of this notice is to inform you of the existence of a collective action lawsuit in which you potentially are "similarly situated" to the named Plaintiff, JAHNI FANNIS, to advise you of how your rights may be affected by this suit, and to instruct you on the procedure for participating in this suit. The Lawsuit at issue was filed on January 31, 2018 against Defendants ACE INDUSTRIES CONSTRUCTION LLC, KYLE LAVENDER, and ANTHONY CUCCINELLO, and others in the United States District Court for the Southern District of New York. The Plaintiff alleged that the Defendants violated the Federal Fair Labor Standards Act by not paying a time and a half hourly rate for hours worked in excess of 40 hours per week during the period January 31, 2015 to the present, inclusive. The lawsuit is seeking back pay and liquidated damages from the Defendants, as well as costs and attorney's fees to compensate such eligible employees. The Defendants deny the Plaintiff's allegations and deny that they are liable to the Plaintiff for any of the back pay, damages, costs or attorney's fees sought.

II. COMPOSITION OF THE COLLECTIVE ACTION CLASS

The named Plaintiff, JAHNI FANNIS, seeks to sue on behalf of himself, and also on behalf of other employees with whom he is similarly situated. Specifically, under the Fair Labor Standards Act, the Plaintiff seeks to sue on behalf of all current and former employees of Defendants who were employed by Defendants as non-supervisory employees at any time between January 31, 2015 and the present inclusive, (the "Collective Action Period") who were not paid for overtime during the Collective Action Period at a rate of one and one-half times their regular rate of pay for hours worked in excess of forty (40) hours per workweek (the "Collective Action Members").

III. YOUR RIGHT TO PARTICIPATE IN THE LITIGATION

If you worked for Defendants, were not a supervisor, worked more than 40 hours a week and did not receive time and a half pay for the time you worked in excess of 40 hours a week, you may join this case (that is, you may "opt-in") by completing and mailing (using the enclosed addressed envelope), faxing or emailing the attached "Consent to Become Party Plaintiff" form to Plaintiff's counsel.

PLAINTIFF'S COUNSEL

Jason L. Solotaroff

Giskin Solotaroff & Anderson LLP

217 Centre Street, 6th Floor New York, New York 10013

Telephone and Fax: (646) 964-9640; E-mail: jsolotaroff@gslawny.com

The form must be sent to Plaintiff's counsel in sufficient time to have Plaintiff's counsel file it with the court on or before [insert date that is 60 days from the mailing date of the notice]. If you fail to return the "Consent to Become Party Plaintiff" form to the Plaintiff's counsel in time for it to be filed with the federal court on or before the above deadline, you may not be able to participate in this lawsuit.

IV. EFFECT OF JOINING THIS ACTION

If you choose to join in this case, you will be bound by the Judgment, whether it is favorable or unfavorable. Should you decide to join this case, you will be subject to discovery obligations, which may include providing deposition or trial testimony under oath, responding to document requests, and/or responding to requests for information. Your receipt of this notice does not indicate any entitlement to recovery as the outcome of the legal action has not yet been determined.

The attorney for the class plaintiffs is being paid on a contingency fee basis, which means that if there is no recovery there will be no attorney's fee. If there is a recovery, the attorney for the class will receive a part of any settlement obtained or money judgment entered in favor of all members of the class. If you sign and return the Consent to Become Party Plaintiff form attached to this Notice, you are agreeing to designate the class representative as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative Plaintiff will be binding on you if you join this lawsuit.

Furthermore, you can join this lawsuit by counsel of your own choosing. If you do so, your attorney must file an "opt-in" consent form by [insert date that is 60 days from date of notice mailing].

V. TO STAY OUT OF THE LAWSUIT

If you do not wish to be part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the federal claims portion of this case in any way and will not be bound by or affected by the result (whether favorable or unfavorable). Your decision not to join this case will not affect your right to bring a similar case on your own at a future time. However, claims under the Fair Labor Standards Act must be brought within 2 years of the date the claim accrues, unless the employer's violation of the law was "willful," in which case the claim must be brought within 3 years. In certain circumstances, such as when an employer fails to post notice of employees' rights, a court may toll the statute of limitations.

VI. NO RETALIATION PERMITTED

Federal law prohibits Defendants from discharging or in any other manner discriminating or retaliating against you because you "opt-in" to this case, or have in any other way exercised your rights under the Fair Labor Standards Act.

VII. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this suit, and agree to be represented by the named Plaintiff through his attorney, your counsel in this action will be:

Jason L. Solotaroff Esq.
Giskin Solotaroff & Anderson LLP
Attorney for Plaintiff
217 Centre Street 6th Floor New York, New York 10013
Telephone and Fax: 646-964-9640
Email: jsolotaroff@gsllawny.com

VIII. COUNSEL FOR DEFENDANTS

The counsel for Defendants is:

Eric Lindquist, Esq. Cermele & Wood LLP
Attorneys for Defendants 2 Westchester Park Drive, Suite 110, White Plains, New York 10606
Telephone: 914.967.2753 Fax: 914.967.2754

Email: eric@cw.legal

IX. FURTHER INFORMATION

Further information about this Notice, the deadline for filing a Consent to Become Party Plaintiff, or answers to questions concerning this lawsuit may be obtained by writing or phoning the Plaintiff's counsel at the telephone number and address stated in Paragraph VII above. You should not contact counsel for Defendants during the notice period described above or if you decide to opt into the plaintiff class.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL DISTRICT COURT, HONORABLE JOHN G. KOELTL. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF THE DEFENDANTS' DEFENSES.

DATED:----- 2018